IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 399/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 23, 2006

Heard Mr. Kilor, Advocate for the appellants and Ms. S.R. Chaudhary, Advocate for the respondents.

The appellants challenge the judgment and decree dated 13.9.2005 passed by the Additional District Judge, Khamgaon in Regular Civil Appeal No. 71/2001 dismissing the appeal filed against the judgment and decree dated 25.10.2001 passed by the 2nd Joint Civil Judge, Junior Division, Khamgaon in Regular Civil Suit No. 2/1998. The appellants/plaintiffs filed the suit for specific performance against respondents on the ground that on 19.6.1986 the plaintiffs and defendant no.1 had entered into an oral agreement of sale

of the suit property for consideration of Rs. 3700/-, out of which the plaintiffs had paid Rs. 3200/- to the defendant no.1. The suit was filed in the year 2001. On 20.7.1995 the defendant no.1 had sold the suit property to defendant no.2 on 20.7.1995. The trial Court, upon appreciation of the evidence led by the parties, held that the oral agreement itself was not established nor the case set up by the plaintiffs that the possession of the suit property was handed over to the plaintiffs was established. Having held that the agreement itself was not established, the trial Court further held that defendant no.2 was in possession of the suit property after execution of the sale deed in his favour. The lower appellate Court in appeal preferred by the plaintiffs concurred with the finding given by the trial Court.

Mr. Kilor, Advocate for the appellants submitted that both the Courts below have erred in holding that the agreement of sale was not established by the plaintiffs and that the plaintiffs were not

put in possession by defendant no.1. He submitted that the plaintiffs are entitled to the relief sought for.

Ms. Chaudhary, Advocate for the respondents supported the judgments passed by both the Courts below.

Having considered the submissions made by learned counsel and having perused the judgments passed by both the courts below, I do not find any merit in this appeal. The finding recorded by the trial Court and confirmed by the lower appellate Court that the plaintiffs have not established oral agreement dated 19.6.1986 and that they were not put in possession of the suit property is a finding arrived at upon proper appreciation of the evidence led by the parties. This finding cannot be said to be perverse warranting interference in second appeal. No substantial question of law is involved in this appeal. Hence, the second appeal is rejected.

C.A.No.4080/2006

In view of dismissal of second

appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.